IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 15157 of 1995

Between:

B.Sreeramulu S/o.Late Narayana Murthy
R/o.Amalapuram E.G.Dist.

..... PETITIONER

AND

1 A.P.S.E.B Rep.by its Member Secretary
Vidyut Soudha Hyderabad.
2 Chairman APSEB
Vidyut Soudha Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari and quash the order of the 1st respondent in Memo.No.DP/DM/S.II/1004/K.1/86-107 dated 25-8-90 and that of the 2nd respondent in Memo.No.DP/DM.IV/71N(A) 1/90-182 dated 25-4-1994 purporting to impose the punishment of removal from the service on the petitioner and consequently direct the respondent to allow all consequential benefits including arrears of wages and attendant benefits and grant such relief or reliefs as it deems fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.VEDULA VENKATARAMANA

Counsel for the Respondents.: MR.S.RAVINDRANATH

The Court made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 15157 of 1995

O R D E R:

This writ petition was filed to issue a writ of Certiorari and quash the order of 1st respondent in Memo No.DP/DM/S.II/1004/K.1/86-107 dated 25.8.1990 and that of the 2nd respondent in Memo No.DP/DM.IV/71 N(A) 1/90-182 dated 25.4.1994 imposing the punishment of removal from service.

It is stated by the petitioner in the affidavit filed in support of the writ petition that he was placed under suspension pending enquiry from 8.5.1997 and an Enquiry Officer was appointed to conduct regular departmental enquiry. The Enquiry Officer issued a charge sheet dated 20.2.1988 where-under 10 charges were levelled against him, which were in the nature of supervisory lapses. None of the charges relating to the misconduct or in the nature of misappropriation or defalcation of the funds of Board. There is a prejudice to him by reason of initiation of disciplinary action by the Member Secretary inasmuch as the Enquiry Officer is inferior in rank to the Member Secretary. Further, framing of charge is in the exclusive domain of the disciplinary authority. As the order of suspension pending enquiry was issued by the Member Secretary, the Superintending Engineer did not exercise his disciplinary power and straightaway the 1st respondent has appointed an Enquiry Officer, who passed the impugned orders dated 25.8.1990. It is stated that the respondents did not furnish a copy of the Enquiry report and therefore he was deprived of reasonable opportunity of submitting representation. An appeal was filed before the 2nd respondent on 6.10.1990 against the order of removal. The 2nd respondent kept the appeal pending for three years and passed the impugned order. The explanation submitted by him was never

considered by the disciplinary authority and the procedure adopted by the Enquiry Officer in conducting the disciplinary proceedings is opposed to the well recognized procedure. The 2nd respondent failed to exercise the jurisdiction vested in him. The imposition of punishment of removal after 36 years of service is shockingly disproportionate to the misconduct of supervisory lapses. Hence, he prays to set aside the impugned proceedings.

Learned counsel for the petitioner Sri V. Venkataramana vehemently contended that all the charges framed against the petitioner are not directly connected to the duties attached to the post of the writ petitioner and they are in the nature of supervisory lapses; that the respondents 1 and 2 have not considered the explanation of the petitioner; that there was no financial loss to the board; that the punishment is shockingly disproportionate to the alleged misconduct; that the appellate authority has not applied its mind, but passed the similar order passed by the disciplinary authority without adverting to the grounds of appeal and that the performance of the officer by itself is not a misconduct. Therefore, he prays to set aside the impugned proceedings and remit back the matter to the appellate authority for reconsideration of the matter.

On the other hand, it is contended by the learned counsel for the respondents Sri S. Ravindranath that the appellate authority dealt the matter by applying its mind in the right perspective. As per the regulations, the petitioner is a workman and therefore he can as well agitate the issue before the Labour Court questioning the punishment, but non-furnishing the report by itself is not a ground to set aside the impugned orders. In view of the serious lapses on the part of the petitioner, the impugned order has been passed and the punishment imposed is proportionate to the proved misconduct and that there are no grounds to interfere with the order of removal passed by the disciplinary authority and as confirmed by the appellate authority.

The petitioner was placed under suspension w.e.f.

8.5.1987 pending enquiry into the charges levelled against him. A Senior Accounts Officer was appointed as Enquiry Officer to enquire into the irregularities/lapses committed by the petitioner. 10 charges were framed against the petitioner.

The law is well settled that in every proceedings and decisions taken in administrative matters, the scope of jurisdiction of this court is confined to the decision making process and it does not extend to the merits of the decision taken. In the decision making process if the authority deciding the case has ignored the vital evidence and thereby arrived at an erroneous conclusion or misconstrued the provisions of the relevant Act or Rules or misunderstood the scope of its jurisdiction, the constitutional power under Article 226 can be invoked to set aside such errors.

The case of the Department is that the writ petitioner failed to exercise the percentage of cheques of credit postings. The petitioner himself admitted that due to sickness he did not do any work. The 2nd charge is that he gave scope for misappropriation of certain amounts as he failed to ensure retention of certain amounts. The explanation of the petitioner is that he handed over the same to the R.Cs., for collection. Charge No.3 is with regard to reconciliation of accounts. The records do indicate that there was no reconciliation. The 4th charge is with regard to failure in ensuring drawal of B.B.A. The petitioner did not check the B.B.A. with bills analysis. The 5th charge is that the petitioner failed to obtain ratification of A.A.O. by the Audit. That is also proved from the record. The 6th charge is that he failed to produce the records as required by the Audit. The 7th charge is that he failed to ensure that 'D' list issued was inclusive of all the uncollected services. The 8th charge is that he failed to realize the arrears due to the Board. The other two charges are also of supervisory nature.

The case of the petitioner is that he was overburdened with several duties and responsibilities and non-filling of certain posts

for years together has contributed to certain lapses in discharging his legitimate duties. It is not in dispute that as per the Board's standing orders the petitioner is in-charge of general supervision over Billing Superintendents and Ledger Clerks and card system U.D.Cs. Some of the important functions he has to attend are to maintain percentage check register duly attesting the entries in ledger, bills etc. and critical review of D.lists and their postings in the consumer ledger. According to the disciplinary authority, the charges pertain to the duties and responsibilities of the petitioner. After an elaborate consideration the Enquiry Officer came to the conclusion that because of the failure to discharge his duties and responsibilities, higher credits were given to 54 consumer accounts to an extent of Rs.45,730/- and fictitious credit postings were made in 673 cases for an amount of Rs.45,900/- during 81-85. The explanation given by the petitioner is not convincing. The order passed by the disciplinary authority cannot be said to be a mechanical one. After considering each charge and considering the findings of the Enquiry Officer, the disciplinary authority passed the order. That order does not suffer from any serious legal infirmities.

With regard to the non-application of mind by the appellate authority, though some of the reasons incorporated in the order of the disciplinary authority are also mentioned in the appellate authority's order, but that does not mean the appellate authority passed the order mechanically. The appellate authority also directed the petitioner to peruse the relevant records but the petitioner failed to avail the said opportunity. As per the regulations, only one statutory appeal is permitted. Therefore, the appeal channel to the petitioner is not blocked.

With regard to the non-supply of enquiry report, that by itself is not a ground to set aside the punishment impugned. Though the appellate authority has given a reasonable opportunity of going through the entire record, the same is not availed by the petitioner. It is not a case of violation of principles of natural justice, because sufficient and reasonable opportunity was given to participate in the

enquiry. In the decision making process, both the disciplinary authority and the appellate authority considered the evidence on record and having accepted the Enquiry Officer's report, the disciplinary authority passed the order with reasons as to how the petitioner was responsible in not discharging his duties and thereby caused loss to the Board. It is not a case of denial of the right of the petitioner in cross-examining the witnesses examined on behalf of the Department.

Learned counsel appearing for the writ petitioner relied upon a decision in **Union of India v. J. Ahmed**, which reads as follows:

> "It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence".

A perusal of the above decision makes it clear that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would not ipso facto constitute misconduct. In this case, the regular duties attached to the post of Accounts Officer, though in the supervisory cadre, have not been discharged by checking the registers etc. Of course, the petitioner is not required to maintain higher standards in discharge of his duties attached to the

post. But, the normal and regular duties which he is expected to do have not been done by the petitioner, thereby highest credits were given in respect of 54 consumer accounts and fictitious credit postings have been done in respect of 673 cases. Therefore, the above decision has no application to the present facts of the case.

With regard to the non-application of mind by the appellate authority, learned counsel for the respondents relied upon a decision in **S.N. Mukherjee v. Union of India**, which reads as follows:

> "In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge".

In this case also, the appellate authority affirmed the order passed by the disciplinary authority, as the order of the disciplinary authority would clearly indicate the reasons for coming to the decision and therefore the appellate authority need not give any separate and independent reasons. Hence, the contention of the learned counsel for the petitioner that the order of the appellate authority suffers from non-application of mind is totally devoid of merit and is unacceptable.

For the aforesaid reasons, the writ petition is devoid of merits and it is dismissed accordingly. No costs.

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K.C. Bhanu, J.

Dt.13–07—2004.

MVB.

..... REGISTRAR

To

1 A.P.S.E.B Rep.by its Member Secretary
Vidyut Soudha Hyderabad.
2 Chairman APSEB
Vidyut Soudha Hyderabad.

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